

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN**

CRAIG CUNNINGHAM,)	
)	
Plaintiff,)	Case No. 3:16-cv-00761-jdp
)	
v.)	Honorable Judge James D. Peterson
)	
MICHAEL MONTES, <i>et al.</i> ,)	Hon. Magistrate Judge Stephen L. Crocker
)	
Defendants.)	

PLAINTIFF'S RESPONSE TO DEFENDANTS' PROPOSED FINDINGS OF FACT

Now comes Plaintiff, CRAIG CUNNINGHAM, by and through his attorneys, and for his Response to Defendants' Proposed Findings of Fact, Plaintiff states as follows:

1. Admitted.
2. Admitted insofar as that number was correct at the time the list was produced to Defendants.
3. Admitted insofar as that number was correct at the time the list was produced to Defendants.
4. Admitted based upon the deposition testimony of Defendant Michael Montes.
5. Admitted based upon the deposition testimony of Defendant Michael Montes.
6. Admitted based upon the deposition testimony of Defendant Michael Montes.
7. Admitted based upon the deposition testimony of Defendant Michael Montes.
8. Admitted based upon the deposition testimony of Defendant Michael Montes.
9. Admitted based upon the deposition testimony of Defendant Michael Montes.
10. Admitted based upon the deposition testimony of Defendant Michael Montes.
11. Admitted based upon the deposition testimony of Defendant Michael Montes.
12. Admitted based upon the deposition testimony of Defendant Michael Montes.

13. Admitted.
14. Denied insofar as Plaintiff's First Amended Complaint makes no allegations related to text messages. Otherwise, admitted.
15. Denied insofar as Plaintiff's First Amended Complaint makes no allegations related to text messages. Otherwise, admitted.
16. Denied. The cited page from Plaintiff's depositions reflects that Plaintiff testified that the calls took place between 2015 and 2018.
17. Admitted.
18. Admitted.
19. Admitted.
20. Denied. The cited page from Plaintiff's depositions reflects that Plaintiff testified that he did not hear any voices in those recordings whom Plaintiff believed to be Michael Montes.
21. Denied. The testimony of Montes supports a finding that Defendants were so involved in the placement of the unsolicited, automated telemarketing calls Plaintiff received to be deemed to have made and/or initiated them. *Deposition of Michael Montes*, Dkt. No. 127, p. 12, lines 4-9; p. 13, lines 9-20; p. 14, lines 14-24; p. 15, line 13 through p. 16, line 1; p. 70, lines 5-13; p. 16 line 14 through p. 18, line 2; p. 37 line 12 through p. 38, line 1; p. 38, line 6 through p. 39, line 9; p. 23 line 17 through p. 24, line 12; p. 102, lines 1-4; p. 117, lines 10-24; p. 41, line 7 through p. 42, line 1; p. 55, lines 1-6; p. 84, lines 13-19; p. 102, line 19 through p. 110, line 9; p. 44, lines 7-10; p. 77, lines 2-19; p. 82, lines 9-19; p. 85, line 23 through p. 86, line 7; p. 87, lines 12-22; p. 92, lines 9-19; p. 95, lines 10-19; p. 96, line 20 through

p. 97, line 4; p. 100, line 17 through p. 101, line 1; p. 101, lines 12-21; p. 77, lines 2-19; p. 80, lines 8-12; p. 92, lines 9-19; p. 94, line 1 through p. 95, line 6; p. 100, line 17 through p. 101, line 11; p. 120, lines 7-12; p. 18, line 23 through p. 19, line 10; p. 23 line 17 through p. 24, line 12.

22. Denied for the same reasons and on the same basis as no. 21 above.
23. Denied for the same reasons and on the same basis as no. 21 above.
24. Denied for the same reasons and on the same basis as no. 21 above.
25. Denied for the same reasons and on the same basis as no. 21 above.
26. Admitted based upon the deposition testimony of Defendant Michael Montes.
27. Admitted based upon the deposition testimony of Defendant Michael Montes.
28. Admitted based upon the deposition testimony of Defendant Michael Montes.
29. Admitted based upon the deposition testimony of Defendant Michael Montes.
30. Admitted based upon the deposition testimony of Defendant Michael Montes.
31. Denied. Montes testified that for some customers, if they provide their data, their message, and their caller ID, Defendants would set up the dialing campaigns for them. *Montes Dep.* (Dkt. No. 127), p. 102, lines 1-4. For some customers, Montes would run their call campaigns, actually “hit[ting] send or start.” *Montes Dep.* (Dkt. No. 127), p. 117, lines 10-24.
32. Denied for the same reasons and on the same basis as no. 21 above.
33. Denied. Montes testified that he had access to those records. *Montes Dep.* (Dkt. No. 127), p. 116, lines 11-16.

34. Admitted only as to the specific testimony of Montes and Plaintiff on this issue. Plaintiff has no knowledge of the exact number of auto-dialer companies in the marketplace and the term “numerous” is vague and undefined.

RESPECTFULLY SUBMITTED,

CRAIG CUNNINGHAM

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CERTIFICATE OF SERVICE

I hereby certify that, on February 15, 2019, a copy of the foregoing Response to Proposed Findings of Fact was filed electronically. Notice of this filing will be sent by operation of the Court’s electronic filing system to all parties indicated on the electronic filing receipt.

/s/ David B. Levin
Attorney for Plaintiff